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Proposition No. I. That the Honorable Circuit Court of Appeals erred in the rendition of its judgment for that the Court in the case of *Singer vs. United States*, 58 Fed. Rep. (2d) p. 74, and numerous other cases therein and hereinafter cited, wherein it was held that this defendant was and would have been entitled to a Bill of Particulars, all as was timely requested from the trial court.. 10

Proposition No. II. That the Honorable Circuit Court of Appeals in and for the Tenth Circuit, erred in holding that the testimony of one H. C. Jones, Collector of Internal Revenue, to income tax returns for the years 1935 and 1938, were harmless,

irrelevant, and incompetent, for that the said testimony of the said H. C. Jones, Collector of Internal Revenue, is directly in conflict with the Singer case supra, and the case of Miller vs. Territory of Oklahoma, C. C. A. 149, Fed., pp. 330-339, and Coulston vs. United States, C. C. A. 51 (Fed. 2d) 178-182 16

Proposition No. III. That the Honorable Circuit Court of Appeals wholly failed to give attention to the exhibits set forth at pp. 57-85, as is set forth in the printed record, all of which said exhibits were and are in the judgment of this petitioner, incompetent, irrelevant, and immaterial, wholly prejudicial, had no relation to the issues involved in the trial of this cause, and could not come within the realm of harmless error, or be considered as a reasonable exercise of the discretion of the trial court 18

Proposition No. IV. That the Honorable Circuit Court of Appeals, in the final paragraph of said judgment rendered, finds and holds in substance, that the fixing of penalties for a criminal offense is a legislative function, and that ordinarily, a sentence within the limits of the applicable statute will not be disturbed 18

Conclusion 19

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NO.

In the Supreme Court of the United States

OCTOBER TERM, 1941

OTTO ROSE,
Petitioner and Appellant Below,

VERSUS

UNITED STATES OF AMERICA,
Respondent and Appellee Below.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT**

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES:

Comes now Otto Rose, the petitioner herein, and respectfully prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Tenth Circuit, entered on May 19, 1942, and that thereafter, and on June 4, 1942, appellant filed his petition and brief for rehearing, said petition and brief was on the 16th day of June, 1942, denied, and that thereafter, and on June 26, 1942, said Court, acting under, by, and through Honorable ORIE L. PHILLIPS, Circuit Judge, and Honorable J. FOSTER SYMES, District Judge, caused to be entered an order staying the mandate of said Court for a period of thirty days from and after June 26, 1942, providing that if within such time there be filed with the clerk of that Court a certificate of the Clerk of the Supreme Court of the United States,

that a petition for writ of certiorari, record and brief shall have been filed with proof of service, as required, by the rules of that Honorable Court, and providing further for a continuance until the final disposition of the case by the Supreme Court of the United States of America.

STATEMENT OF FACT

The cause herein presented is an appeal from the judgment of the Circuit Court of Appeals for the Tenth Circuit wherein the said Circuit Court of Appeals upheld a judgment of conviction against this petitioner. Petitioner was tried and convicted for a violation of Section 145, Title 26, U. S. C. A. on two counts; one charging a violation of said act for the year 1936, and the other charging a violation of said act for the year 1937, all of which said indictment is set forth at pages 3 to 9 of the printed record filed herewith.

It will be further observed that from time to time, and until said case was finally heard, various motions were filed, which said motions, and more particularly, the motion for a bill of particulars, are set forth in the printed record herewith submitted.

OPINIONS BELOW

Petitioner and appellant would further show that heretofore and on the 24th day of April, 1941, he was found guilty by a jury in the District Court of the United States in and for the Western District of the State of Oklahoma. That thereafter, petitioner and appellant caused to be filed

a proper motion for a new trial, notice of appeal, and various other motions, all of which as are by law and rule required, and which are set forth and shown in the printed record filed herewith.

BASIS OF JURISDICTION

The jurisdiction of this Honorable Court is invoked upon the grounds and for the reasons:

(1)

That heretofore and to-wit on the 19th day of May, 1942, the Circuit Court of Appeals for the Tenth Circuit of the United States of America has decided a question which is directly in conflict with the case of *Singer v. United States*, reported at 58 Fed. (2d) page 74.

(2)

That the said Circuit Court of Appeals has decided an important question of general law in a way probably untenable and/or in conflict with the weight of authority in that the said Circuit Court of Appeals in determination of the case at bar has further held and attempted to apply the rule of harmless error, all of which is in conflict with the general law of the land, and especially in conflict with the cases of *Miller v. Territory of Oklahoma*, C. C. A., 149 Fed. 330-339, and *Coulston v. United States*, 51 Fed. (2d) 178-182, "which said cases will hereinafter be directed to the attention of the Court."

"Petitioner further alleges and believes the fact to be that the Circuit Court of Appeals has so far departed from the accepted and usual course of jurisdictional proceedings, or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision in this, to-wit: that said Court in passing upon the application for a bill of particulars holds that although the defendant, if a seasonable application therefore be made, is entitled to the same, and yet at the same time undertakes to apply the rule of harmless error, all of which is objectionable under the law." Yet the Court holds that the guilt of petitioner was apparent and that the action of the trial court was harmless.

Accompanying this petition is a certified transcript of the printed record, including the proceedings in the Circuit Court of Appeals.

PRAYER AND CONCLUSION

Wherefore, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding said Court to certify and send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of all proceedings, if any there be that are not accompanied by the copies filed with this petition, in cause Number 2316, wherein Otto Rose, petitioner herein, was appellant, and the United States of

America was the appellee, to the end that this cause may be reviewed and determined by this Court as is provided for by the Statutes of the United States, and that the judgment herein of said Court be reversed by this Court, and for such other relief as to this Court shall seem mete and proper.

Respectfully submitted,

OTTO ROSE,
Petitioner,

By: EDWARD M. BOX,
His Attorney.

July, 1942.